*** THE HON'BLE THE ACTING CHIEF JUSTICE BILAL NAZKI**
AND
*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NOs. 313, 597, 21854 AND 24513 OF 2005

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W.P. No. 313 of 2005:

% 13.12.2007

M. Govinda Rao, S/o Suryanarayana, Hindu, aged about 41 years, R/o. D. No. 70-2-39, Flat No. 303, Preetham Nivas, Patamata, Vijayawada, Krishna District and two others.

.....

Petitioners

and

$ A.P. State Wakf Board, rep., by its Principal Secretary, Hyderabad.

! Counsel for the petitioners: Sri P.R. Prasad
^ Counsel for the Respondent: Sri Abdul Muqeeth Qureshi

< Gist:

>Head Note

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[1] 2000(5) ALT 626
2 1999(5) ALD 324
3 2001(4) ALD 69 (SC)
4 (1990)4 SCC 356
5 (2007)2 SCC 181
6 AIR 1969 SC 707
7 AIR 1967 SC 295
8 1983(2) SCC 402
9 1999(6) SCC 418
10 2006(4) SCC 327

[11] 1972(2) SCC 744
[12] 2004(2) SCC 590
[13] AIR 1998 SC 972
[14] AIR 1966 SC 828
[15] 2000(7) SCC 529
[16] (1999) 6 SCC 237
[17] 2003(4) SCC 557
[18] 2004(4) SCC 281
[19] (1980)4 SCC 379
[20] 2007(4) SCC 54
[21] (1994) 2 SCC 481
[22] (2002) 1 SCC 100
[23] AIR 1955 S.C.425
[24] AIR 1987 SC 2235
[25] AIR 1989 SC 1972

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WRIT PETITION NOs. 313, 597, 21854 AND 24513 OF 2005

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

"***Save valuable Wakf lands from being sold for a song***" is a cry in anguish from Mirza Yaseen Ali Baig who has filed W.P. No. 21854 of 2005 in public interest to have G.O.Ms. No. 22, Minorities Welfare (Wakf.I) Department, dated 18.10.2004, quashed. He also seeks to have the sale deeds, executed in favour of respondents 6 to 11 pursuant to G.O.Ms.No.22 dated 18.10.2004, set aside contending that crores of rupees worth Wakf property had been alienated to them for a pittance.

The petitioner's case, in short, is that the Government Qazi had sought permission for sale of Wakf lands admeasuring Ac.39.16 cts on the specious plea of safeguarding it from illegal encroachment, that

while these Wakf lands would have fetched between 30 to 40 lakhs per acre the sale consideration was fixed at an abysmally low price of Rs.6 lakhs per acre and that G.O.Ms. No. 22, dated 18.10.2004 was issued by the Government according sanction for its sale to respondents 6 to 11 though Wakf lands could be sold only by way of public auction after following the procedure prescribed under Section 51 of the Wakf Act. Petitioner would contend that the impugned G.O. was not only malicious, as it was taken with a view to favour respondents 6 to 11, but was also detrimental to the interest of the public as well as to the Wakf.

Facts, in brief, are that on the proposals of the Qazi for the sale of Wakf lands, of an extent of Ac.39.16 cts, in Survey Nos. 201 to 203/2 of Nidamanuru Village, Krishna District to the tenants, the President and Vice-President of the Krishna District Wakf Committee, after inspecting the lands along with the Inspector and Auditor of Wakfs, submitted a report to the District Wakf Committee which, in its meeting held on 10.06.1994, unanimously resolved to refer the proposal to the A.P. State Wakf Board, for its permission and sanction, on the ground that taking possession of these lands from the tenants would involve endless litigation. The President, Krishna District Wakf Committee, vide letter dated 13.06.1994, requested the Secretary, A.P. State Wakf Board to grant permission and sanction for the sale of these land in favour of the tenants at government rates. The Special Officer, A.P. State Wakf Board, vide letter dated 08.08.1994, informed the Government that vacant lands available in towns and cities were the target of encroachment by land grabbers, that once Wakf lands were encroached upon it was very difficult to get the land back due to

various reasons and, keeping in view all these facts, it was felt that it would be safe to sell the vacant lands and deposit the sale proceeds in any nationalized bank in the joint account of the Secretary, Wakf Board and the Qazi concerned and to advice the Qazi to purchase an alternate property from out of the sale proceeds. The Special Officer requested the government to grant permission to sell the Qazi Inam Wakf lands to the tenants at the market value, as furnished by the registration department, plus 25%.

Thereafter, the matter remained in hibernation for six long years till the Government, vide memo dated 22.03.2000, informed the Chief Executive Officer, A.P. State Wakf Board that their proposal dated 08.08.1994 had been examined and it was tentatively decided to sell the Wakf land, of Acres 39.16 cts, in Survey Nos. 201, 201/A, 202/2, 203/1 and 203/2 of Nidamanuru Village, Krishna District, to the tenants. The Chief Executive Officer was requested to follow the procedure laid down in the Wakf Act for sale of Wakf lands ie., publication in the gazette, calling objections etc and that proposals in full shape, for according necessary permission, be submitted thereafter. A notification was published in the A.P. Gazette dated 27.04.2000 giving notice to the general public, under Section 51(2) of the Wakf Act, (hereinafter referred to as the Act), read with Rule 12(2) of the A.P. Wakf Rules,(hereinafter referred to as the Rules), inviting claims, objections and suggestions, for the sale of these lands.

Thereafter G.O.Ms. No. 22 dated 18.10.2004 was issued wherein it was noted that the Chief Executive Officer, A.P. State Wakf Board had sent proposals on 05.06.2000 seeking permission for the sale of the Wakf lands to the tenants as a special case, in relaxation of

Section 51 of the Act, as public auction was not feasible due to the long standing possession of the tenants, that the Collector, Krishna, in his letter dated 17.08.2004, had informed that the prevailing market value of the subject Wakf lands ranged from rupees five lakhs to six lakhs per acre and that the Government, in exercise of the powers conferred under Section 97 and in relaxation of Section 51 of the Act, had accorded permission to the Chief Executive Officer, A.P. State Wakf Board for the sale of Kondapalli Qazi service Inam lands of an extent of Ac.39.16 cts at Rs.6 lakhs per acre to the six tenants mentioned in the G.O, subject to the conditions that payment should be made in one lumpsum or in three equal instalments, that registration of the lands should be effected only after receipt of the total sale consideration and that the sale proceeds should be deposited in a nationalised bank in the name of the Wakf institution. Respondents 6 to 11 deposited Rs.234.96 lakhs representing the entire sale consideration and, pursuant thereto, the A.P. State Wakf Board executed sale deeds in their favour on 29.12.2004.

The Legislative Committee on Minorities Welfare, while informing the Government that subsequent independent local enquiries revealed that the land value in and around Vijayawada town had increased manifold, requested that G.O.Ms. No. 22 dated 18.10.2004 be cancelled as the price fixed for the sale of wakf lands was very low. Keeping in view these facts, and the interest of the Wakf, the Government issued orders in G.O.Rt. No. 8, Minorities Welfare (Wakf.I), Department, dated 05.01.2005, cancelling the orders issued earlier in G.O.Ms. No. 22 dated 18.10.2004.

G.O.Rt. No. 8 dated 05.01.2005 is the subject matter of

challenge, in W.P. Nos. 313, 597 and 24513 of 2005, by respondents 6 to 11 in W.P.No.21854 of 2005 and others who claim to be the tenants of these Wakf lands. While respondents 6 to 8 in W.P. No. 21854 of 2005 are the petitioners in W.P. No. 313 of 2005, respondents 9 to 11 in W.P. No. 21854 of 2005 are the petitioners in W.P. No. 597 of 2005. The sole petitioner in W.P. No. 24513 of 2005 claims that his forefathers are the tenants of 6.50 Acres of land, in Sy. No. 201 of Nidamanur village, for the past more than 50 years. Parties shall hereinafter be referred to as they are arrayed in W.P. No. 21854 of 2005.

In his counter affidavit, the Chief Executive Officer of the A.P. State Wakf Board, states that the Government, after conducting independent enquiries and ascertaining that the price fixed in G.O.Ms. No. 22 dated 18.10.2004 was low, had issued G.O.Rt. No. 8 dated 05.01.2005 and that the wakf lands, subject matter of these writ petitions, together with other lands in different survey numbers, are notified Wakfs published in the A.P. Gazette Part-II dated 28.06.1962. While denying the claim of respondents 6 to 11, of their being in possession for more than 40 years, it is stated that neither was any lease granted by the Board in their favour nor was any sanction accorded under Section 56 of the Act, that Wakf lands could not be alienated in relaxation of Section 51 of the Act, that after enquiry the Inspector and Auditor of Wakfs, in his report dated 04.04.1994, had stated that the tenants were not showing any interest to spend amounts to make the lands fit for cultivation, that the lands were not fetching proper income and that the sale of these Wakf lands, contrary to the provisions of the Act, was void.

Sri V.R. Avula, learned counsel for the petitioner in W.P. No. 21854 of 2005, would rely on **Managing Committee, Wakf, Jamia Masjid, Jaggayyapet Vs. State of Andhra Pradesh**[1] to submit that the power conferred on the Government, under Section 97 of the Act, could be exercised only to further the provisions of the Act and not to give directions contrary thereto. He would contend that sale of Wakf lands, without adhering to the mandatory provisions of Section 51 of the Act, was illegal.

Sri E. Manohar, learned Senior Counsel appearing on behalf of Respondents 9 to 11, would contend that G.O.Rt. No. 8 dated 05.01.2005 was liable to be quashed on the following grounds: (1) once action is completed pursuant to G.O.Ms. No. 22 dated 18.10.2004, and the order implemented by registration of the sale deeds, the Government had no authority to cancel either the G.O. or the sale deeds; (2) Subsequent rise in the price of lands would not justify an earlier sale being set aside; (3) the reasons for cancellation was wholly unjustified; (4) the lands, being Qazi Service Inam lands, was burdened with service and was not Wakf property; (5) the impugned order was issued without complying with principles of natural justice; (6) the market value of the lands in 1994 was around Rs.70,000/- per acre far less than the price at which the lands were sold to the respondent-tenants; (7) G.O.Rt. No. 8 dated 05.01.2005 was issued without application of mind to the contents of G.O.Ms. No. 22 dated 18.10.2004; (8) Since prior sanction of the Government had been obtained, and directions had been issued to the Wakf Board under Section 97 of the Act, these lands, even if it were held to be Wakf lands, could be sold under Rule 12; and (9) while public auction

was the norm, in cases where the lands were in the possession of the tenants for the past several decades, their sale, without the process of an auction, was justified. Reliance is placed by the Learned Senior Counsel on a Division Bench judgment of this Court in **Hitakarini Samaj Vs. State of Andhra Pradesh**[2] as confirmed by the Supreme Court in **Hitakarini Samaj Vs. State of A.P.**[3].

Sri P.R. Prasad, learned Counsel appearing for Respondents 6 to 8, would submit that, since sale deeds had already been executed on 29.12.2004, the relief sought for in W.P. No. 21854 of 2005 cannot be granted, that the Government had the power under Sections 97 and 99(2)(b) of the Act, to issue binding directions to the Wakf Board, that respondents 6 to 11 as statutory tenants are entitled to remain in possession and to claim statutory protection under Sections 15 and 18 of the A.P. (Andhra Area) Tenancy Act, and, as the dispute relates to sale of lands at low prices, a direction could be given to the official respondents to permit respondents 6 to 11 to pay the differential amount within a specified period, in easy instalments.

Learned Government Pleader would submit that immovable Wakf property dedicated for religious or charitable purposes, cannot be sold without complying with the mandatory provisions of the Act or at prices far below the market value.

ARE THE LANDS, WHICH WERE SOLD PURSUANT TO G.O.Ms. No. 22 DATED 18.10.2004, WAKF PROPERTY OR NOT?

As is evident, from the counter affidavit filed by the Chief Executive Officer of the A.P. State Wakf Board, the lands, subject matter of sale under G.O.Ms. No. 22 dated 18.10.2004, are included in the list of wakfs published in the A.P. Gazette on 28.6.1962. Section

3(g) of the Act defines *"list of Wakfs"* to mean the list of Wakfs published under sub-section (2) of Section 5. Section 3(r) defines *"Wakf"* to mean the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognized by muslim law as pious, religious or charitable. Section 5 relates to publication in the Official Gazette of the list of Wakfs in the State, whether in existence at the commencement of the Act or coming into existence thereafter. Under Section 6(4) the list of Wakfs shall, unless it is modified pursuant to a decision of the Tribunal, be final and conclusive. Section 7 confers powers on the Tribunal to determine disputes regarding Wakfs. Since inclusion of these lands in the list of Wakfs, published in the A.P. Gazette dated 28.6.1962, is final and conclusive, these lands are undoubtedly immoveable Wakf property. The contention to the contrary must, therefore, fail.

Section 51 of the Act reads as under:

51 ALIENATION OF WAKF PROPERTY WITHOUT SANCTION OF BOARD TO BE VOID

"(1) Notwithstanding anything contained in the wakf deed, any gift, sale or exchange, mortgage of any immovable property which is wakf property, shall be void unless such gift, sale, exchange or mortgage is effected with the prior sanction of the Board :
Provided that no mosque, dargah or khangah shall be gifted, sold, exchanged or mortgaged except in accordance with any law for the time being in force.

(2) The Board may, after publishing in the Official Gazette, the particulars relating to the transaction referred to in sub-section (1) and inviting any objections and suggestions with respect thereto and considering all objections and suggestions, if any, that may be received by it from the concerned mutawalli or any other person interested in the wakf, accord sanction to such transaction if it is of the opinion that such transaction is-
(i) necessary or beneficial to the wakf;
(ii) consistent with the objects of the wakf;
(iii) the consideration thereof is reasonable and adequate:

Provided that the sale of any property sanctioned by the Board shall

be effected by public auction and shall be subject to confirmation by the Board within such time as may be prescribed:
Provided further that the Tribunal may, on the application of the aggrieved mutawalli or other person, for reasons to be recorded by it in writing permit such sale to be made otherwise than by public auction, if it is of the opinion that it is necessary so to do in the interest of the wakf.

(3) The utilisation or investment of the amount realised by the sale or exchange or mortgage of any property shall be made by the mutawalli subject to the approval of the Board, and where any amount has been raised by mortgage of any such property, the mutawalli or other person shall make repayment of the mortgage-debt and obtain a discharge of the mortgage-debt from the mortgage within such reasonable time as the Board may specify.

(4) Every approval given by the Board under sub-section (3) shall be communicated to the mutawalli and shall also be published in the manner prescribed.

(5) The mutawalli or any other person having an interest in the wakf who is aggrieved by the decision given under sub-section (3), may, within ninety days from the date of communication to him of such decision or the publication of the decision, as the case may be, prefer an appeal to the Tribunal against such decision and thereupon, the Tribunal may, after giving the appellant and the Board, a reasonable opportunity of being heard, confirm, modify or set aside such decision.

Rule 12 (1) of the A.P. Wakf Rules reads thus:

"Conditions and restrictions subject to which the Board may transfer, purchase or alienate Wakf property under Sections 51 and 53 of the Act:- (1) Any purchase, sale, exchange or transfer of Wakf property by the Board shall be subject to prior approval of the State Government and adherence to the directions issued under Section 97 of the Act.

Provided that the sale of any property sanctioned by the Board with prior approval of Government shall be effected by public confirmation by Board within one month from the date of aucton:

Provided further that the sale proceeds or the consideration realized by way of open auction is credited to the institution account and utilized for the purpose for which the Wakf was created, with the prior approval of the Board.

FORMATION OF OPINION: FACTORS TO BE TAKEN INTO CONSIDERATION:

Sale of immovable Wakf property can be effected, under Section 51 of the Act, only with the prior sanction of the A.P. State

Wakf Board. The Board is required under Section 51(2) to form its opinion that the sale transaction is (i) necessary or beneficial to the wakf; (ii) consistent with the objects of the wakf; and (iii) the sale consideration is reasonable and adequate.

In the formation of opinion regard must be had to the factors enumerated in the Section together with all other factors relevant for exercise of that power. Formation of opinion must be based on objective considerations. (**India Cement Ltd. Vs. Union of India**[4], **Rajesh Kumar Vs. Dy. CIT**[5]). There must exist circumstances which, in the opinion of the Authority, suggest what has been set out in the Section. Existence of the circumstances mentioned in the Section is a condition precedent for formation of the required opinion and, if the existence of those conditions is challenged, Courts are entitled to examine whether those circumstances existed when the order was made. (**Rohtas Industries Ltd Vs. S.D. Agarwal**[6]). If it is shown that the circumstances do not exist, or that they are such that it is impossible for any one to form an opinion therefrom, the opinion can be challenged on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the Statute. (**Barium Chemicals Ltd. Vs. Company Law Board**[7]**).**

SALE OF WAKF LANDS CAN BE MADE ONLY BY WAY OF PUBLIC AUCTION:

Under Section 51(2), even on sanction being accorded by the Board after formation of the requisite opinion, the immovable property can be sold only by public auction. The Sale has also to be confirmed by the Wakf Board within one month from the date of public auction as

stipulated under the proviso to Section 51(2) read with Rule 12 (1) of the Rules.

RULES CANNOT TRAVEL BEYOND THE SCOPE OF THE PARENT ACT:

An additional safeguard is provided under Rule 12 (1) in that prior sanction of the government is required for the sale of the Wakf property. Rule 12 (1) cannot be read in isolation and must be construed harmoniously with Section 51 of the Act, for it is a well settled principle of interpretation of statutes that the conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. (**State of Karnataka Vs. H. Ganesh Kamath**[8]). Rules can neither be framed as not to carry out the purposes of the Act not can it be in conflict therewith. (**Laghu Udyog Bharati Vs. Union of India**[9]). A rule must also conform to the provisions of other Acts. Subordinate legislation cannot violate plenary legislation. (**Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala**[10]). A protection given by the statute cannot be nullified by rules and regulations authorised by the statute itself. (**Management of D.T.U. Vs. Shri B.B.L. Hajelay**[11]). When Rule 12(1) is so read in conjunction with Section 51, sale of Wakf property by the Wakf Board being subject to the prior sanction of the Government would be a statutory restriction in addition to those mandated under Section 51 of the Act.

POWER TO RELAX THE RIGOUR OF SECTION 51 FOR SALE OF WAKF LANDS OTHERWISE THAN BY PUBLIC AUCTION IS CONFERRED ONLY ON THE WAKF TRIBUNAL AND NOT ON THE WAKF BOARD OR THE GOVERNMENT:

Neither the Wakf Board nor the Government have been conferred the power to relax the riguor of Section 51 of the Act and to sell immovable Wakf property otherwise than by public auction. It is only the Wakf Tribunal, as constituted under Section 83(1) of the Act, which is empowered under the second proviso to Section 51(2) to grant such permission. The power of the Tribunal to accord such permission is also not unfettered but is circumscribed by the requirement of recording reasons and formation of the opinion that permission to sell immovable property, otherwise than by public auction, is necessary in the interest of the wakf. These stringent safeguards, prescribed under the Act and the Rules, emphasize that the interest of the Wakf is paramount and ensure that valuable immovable Wakf properties are not squandered away.

As noted hereinabove, among the conditions precedent, for the valid sale of wakf lands under Section 51 of the Act, is the formation of the opinion by the State Wakf Board that the consideration for sale of wakf property is reasonable and adequate. The most effective manner of ensuring compliance of this condition is sale of wakf lands by public auction. Not only would such a mode be transparent it would, by its being held in open public view and gaze, and its being subjected to public scrutiny, also ensure that the best possible price is received on the sale of such lands. The first proviso to Section 51(2) of the Act, which seeks to achieve this salutary public purpose of securing the best price possible on the sale of wakf lands, is mandatory and cannot be dispensed with.

In the case on hand, while the procedural requirements prescribed in Section 51(2) of the Act, of publication in the Gazette and

inviting objections and suggestions with respect to the sale of immovable Wakf property may have been satisfied, no material has been placed before us to show that the A.P. State Wakf Board had applied its mind and had formed the opinion that sale of these Wakf lands was necessary or beneficial to the wakf, was consistent with the objectives of the wakf and the sale consideration was reasonable and adequate. There is no material on record to show that the Wakf Board had accorded sanction for the sale of these wakf lands. The letter addressed by the Special Officer of the Wakf Board on 08.08.1994 seeking permission of the Government to sell these lands cannot be said to be a sanction which the Wakf Board is empowered, by Section 51(2), to accord. The sale, under G.O.Ms. No 22 dated 18.10.2004, is also in violation of the requirement, under the Act and the Rules, of its being made only by way of public auction and confirmation of such sale to be made by the Wakf Board within 30 days of the auction.

In **Hitakarini Samaj**[2], the Division Bench of this Court had opined:-

"……..**The principle is well settled that public property intended to be sold for the purpose of generating revenue ought normally to be sold by public auction so as to avoid the evils of mal-administration and to achieve the best possible price involved in the competitive bidding, which can only be achieved by sale in public auction**.

The facts of the case on hand, in our view, warrant a departure from the said principle. On account of the lease granted by the private management of the Samaj (under the a seigs of the writ petitioner himself) the tenant has been in possession of the property on payment of very meagre rent, Rs. 4200. 00 p. a. , as on the date of the sale proposals. Under the terms of the lease he was also entitled to exercise the first option to purchase the property if proposed to be sold by the lessor. There were an established industry and structures on the land in question which were in possession of the lessee for over 30 years. Large number of workmen were employed in the said industry. A conspectus of this fact situation rendered the process of evicting the lessee and obtaining clear possession of the

property by the institution, remote, tartuous and time consuming. The charitable institution thus had either to continue with the tenancy at a nominal rent or to dispose of the property for getting reasonable good return which if invested would fetch a far better annual return. In these circumstances, the State Government and the Commissioner of Endowments decided to dispose of the property to the sitting tenant otherwise than by public auction. The price for the sale was arrived at on a procedurally rational method by constituting a Committee for the said purpose. The Committee determined the price at Rs. 400. 00 per sq. yds. , which was above the basic value of the land during the period as stated in the counter-affidavit. The Government could also manage to persuade the 4th respondent to pay interest from the date the Government permitted the sale of the property till the actual date of the sale. An amount of Rs. 12,65,600. 00 plus an amount of Rs. 1,75,200. 00 coming to a total amount of Rs. 14,40,800. 00 was obtained which, when invested in the Bank, fetches an annual interest of Rs. 1,30,980. 00 as against the annual rent of Rs. 4,200. 00 being paid by the lessee……" (emphasis supplied)

The aforesaid judgment was affirmed by the Supreme Court in **Hitakarimi Samaj Vs. State of A.P.**[3].

The exception in **Hitakarimi Samaj**[2], to the well settled principle that public property should be sold only by public auction, cannot be applied to the sale of wakf lands as Section 51 of the Act mandates such sale to be made only by public auction.

SECTION 97: EXERCISE OF DISCRETION BY THE GOVERNMENT CAN ONLY BE IN FURTHERANCE OF AND NOT CONTRARY TO THE MANDATORY PROVISIONS OF THE ACT:

The power conferred on the State Government, under Section 97 of the Act, to issue general or special directions to the Board can only be to act in accordance with the provisions of the Act and not contrary thereto, for it is well settled that the discretionary power conferred under a statute must be exercised only in furtherance of the statute and not in derogation thereof. When anything is left to any person to be done according to his discretion, the law intends it must be done according to law. Discretion is to discern between right and

wrong. Whoever hath the power to act at discretion, is bound by the rule of reason and law. It is not to be arbitrary, vague and fanciful, but legal and regular. It must be exercised within the limit to which an honest man, competent to discharge his office, ought to confine himself to. (**Union of India Vs. Kuldeep Singh**[12]).

The Wakf Act 1995, has been enacted by Parliament to provide for the better administration of wakfs and for matters connected therewith or incidental thereto. Under Section 13(1) of the Act, the State Government is empowered, by a notification in the official gazette, to establish a Board of Wakfs. Section 32 relates to the powers and functions of such a Board and, under sub-section (1) thereof, the general superintendence of all wakfs in the State vest with the Board and it shall be the duty of the Board to exercise its powers under the Act to ensure that the wakfs, under its superintendence, are properly maintained, controlled and administered. Under the proviso to Section 32(1) the Board, while exercising its powers under the Act in respect of any wakf, is required to act in conformity with the directions of the Wakif, the purposes of the wakf and any usage or custom of the Wakf sanctioned by the school of Muslim law to which the wakf belongs. Section 32(2)(b) requires the Board to ensure that the income and other property of the wakf is applied to the objects and for the purposes for which such wakf was intended or created. Section 33 confers powers of inspection on the Chief Executive Officer and, under Section 34, where a mutawalli or any other person, who has been ordered to restore possession of wakf property, fails to so restore, the Chief Executive Officer, with the prior approval of the Board, is empowered to take steps for recovery of possession of the property as

also to send a certificate to the Collector of the District who is required to take necessary steps for such recovery. Section 35(1) empowers the Chief Executive Officer of the Board to apply to the Tribunal for conditional attachment of the property if he is satisfied that the person who has been ordered to restore the property is about to dispose of the property with the intention of defeating its execution. Sub-section (4) empowers the Tribunal to direct conditional attachment of the whole or any portion of the property. Section 36 relates to registration of wakfs and, under sub-section (1), every wakf, whether created before or after commencement of the Act, shall be registered at the office of the Board. Under Section 37(d), the Board shall maintain a register of wakfs which shall contain particulars of the property of the wakfs and the title deeds and documents relating thereto. Under Section 40(1), the Board is empowered to collect information regarding any property, which it has reason to believe to be wakf property, and if any question arises whether a particular property is wakf property or not, the Board may, after making such inquiry as it may deem fit, decide the question. Under sub-section (2) the decision of the Board, on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final. Section 44 requires every mutawalli of a wakf to prepare a budget and such budget is required to make adequate provisions, under sub-section (2)(ii), for the maintenance and preservation of wakf property. Under Section 51 alienation of wakf property without sanction of the Board is void. Section 52 empowers the Board to recover wakf property transferred in contravention of Section 51. Section 54 empowers the Chief Executive Officer to remove encroachments from wakf property. Section 55 relates to enforcement

of orders made under Section 54 and Section 56 restricts the power of the Board to grant lease of wakf property. Under Section 61(1) (d) and (e), if a mutawalli fails to allow inspection of wakf properties, accounts, records or deeds and documents relating thereto or to deliver possession of any wakf property, if ordered by the Board or the Tribunal, he is liable to be punished with imposition of fine which may extend to Rs.8000/-. Section 96 confers powers on the Central Government to regulate the secular activities of wakfs. Under Section 107, nothing contained in the Limitation Act shall apply to any suit for possession of immovable property comprised in any wakf or for possession of any interest in such property and, as a result, possession of immovable wakf property can be recovered at any time.

As noted above, Section 96 empowers the Central Government to regulate secular activities of wakfs. Since immovable wakf property is also dedicated, under Section 3(r), for pious and religious purposes, the Wakf Act, 1995 prohibits the Central and the State Government from interfering therewith except to the limited extent specified under the Act. The Wakf Act, 1995 provides sufficient safeguards to preserve and protect immovable wakf property and prescribes stringent measures to prevent its misuse. Any power which the State Government may exercise under Section 97, to issue directions to the Board, can only be in furtherance of the mandatory provisions of the Act to ensure protection of wakf property from encroachment, illegal alienation, transfers etc.

Reference in this context can usefully be made to **Managing Committee, Wakf, Jamia Masjid, Jaggayyapet**[1], wherein, B. Sudershan Reddy J, (as he then was), observed:

"……..Section 97 of the Act empowers the State Government to

give to the Board such general or special directions as the State Government thinks fit and correspondingly an obligation is imposed upon the Board to comply with such directions in the performance of its functions. **In my considered opinion, the State Government in purported exercise of the power under Section 97 of the Act cannot give any direction whatsoever in a particular case and compel the Wakf Board to decide its statutory duties and obigations in a particular manner. Any reading of Section 97 of the Act, as suggested by the learned Counsel for the third respondent, would amount to conferring jurisdiction upon the State government to interfere in the day-to-day administration and management of the wakf Board.** The statutory power and authority conferred upon the Wakf Board under the provisions of the Act cannot be allowed to be guided or structured by the State Government in an individual case or issue as the same would amount to controlling or guiding the statutory power of the Wakf Board by the State Government. This Court, in "**Markaz Constructions vs. S. H. Mirza Wakf**" approvingly referred to the decision of Karnataka High Court in "**Masjid- e-Islammabad vs. Karnataka Board of Wakf**" observed:

"once it is accepted that the Board is the statutory authority for giving such sanctions, it is axiomatic that such a statutory power cannot be subject to any control or guidance by any other extraneous authority, even though section 63 enables the Government to give directions in respect of the functions of the Board such government supervision would be limited to **general functions of the wakf Board and cannot take any specific statutory power to be exercised by the Wakf Board in its own discretion**. " (emphasis supplied)....."

We are in complete agreement with the construction placed on Section 97 of the Wakf Act in the aforesaid judgment. Section 97 of the Act does not empower the State Government either to relax or give a go-bye to the provisions of Section 51 or to accord permission to the Chief Executive Officer of the A.P. State Wakf Board to sell Wakf lands otherwise than by public auction.

We declare G.O.Ms. No. 22 dated 18.10.2004 illegal since, in the sale of the Wakf lands mentioned therein, the mandatory provisions of Section 51 and Rule 12 have not been adhered to i.e.,

(1) Prior sanction of the Wakf Board for the sale of these wakf lands was not obtained.

(2) The Wakf Board did not form the opinion that sale of wakf land was:-

(i)necessary or beneficial to the wakf

(ii) consistent with the objects of the wakf; and

(iii) the sale consideration was reasonable and adequate.

(3) sale of these wakf lands was not made by way of public auction

(4) the requirement of such a sale by public auction being confirmed thereafter by the Board within 30 days has also not been complied with; and

(5) the conditions prescribed in Rule 12, of prior approval of the Government for sale of wakf lands being obtained, after sanction has been granted by the Wakf Board thereto and prior to its actual sale, has also not been complied with.

G.O.Rt. No. 8 DATED 05.01.2005: IS IT VALID:

Now the contentions urged in challenge to the validity of G.O.Rt. No. 8 dated 5.1.2005.

The counter affidavit filed by the Chief Executive Officer of the A.P. State Wakf Board discloses that neither was a lease granted by the Board in favour of respondents 6 to 11 nor was sanction accorded under Section 56(2) of the Act. No evidence, of a valid lease having been entered into by them with the Wakf Board, has been placed before us by respondents 6 to 11.

While it is no doubt true that under Section 99(2)(b) the State Government has the power to supersede the Board and exercise all the powers of the Board itself, it cannot, even while acting as and exercising the powers of the Wakf Board, ignore or act contrary to the mandatory provisions of Section 51 of the Act. Under Section 15 of the A.P. (Andhra Area) Tenancy Act, any landlord intending to sell the lands leased to a cultivating tenant, shall first give notice to such cultivating tenant of his intention to sell such lands and require him to exercise his option to purchase the lands. If the cultivating tenant exercises his option, the landlord is required to sell the lands only to

such cultivating tenant. Under the proviso to Section 15(3) the reasonable price to be determined for the lands to be sold shall not exceed five times the fair rent. Section 18 is the Savings Clause and, thereunder, the Act is held not to apply to certain lands. The contention that, since wakf lands are not shown under Section 18, the respondents as cultivating tenants are entitled for the statutory protection under Section 15 of the Act, and to have the preferential right to purchase the lands under their cultivation, are submissions required merely to be noted to be rejected.

Section 56 of the Wakf Act reads as under:-

56. RESTRICTION ON POWER TO GRANT LEASE OF WAKF PROPERTY

(1) A lease or sub-lease for any period exceeding three years of any immovable property which is wakf property shall, notwithstanding any- thing contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect.

(2) A lease or sub-lease for a period exceeding one year and not exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease or sub-lease or renewal thereof under this section review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.

It is the case of respondents 6 to 11 that they have been in possession of the lands, sold to them under G.O.Ms.No.22 dated 18.10.2004, for the past several decades. Even in cases where a lease is executed, such lease of immovable wakf property exceeding 3 years is void under Section 56(1), notwithstanding anything contained in any other law for the time being in force including the A.P. (Andhra

Area) Tenancy Act, and is of no effect. Respondents 6 to 11 are, therefore, not entitled to claim protection under Section 15 of the A.P. (Andhra Area) Tenancy Act or for any preferential right to purchase wakf lands at low prices.

In this context reference can usefully be made to **Sayyed Ali Vs. Andhra Pradesh Wakf Board**[13] wherein the Supreme Court observed:-

> ".....Lastly it was contended by the learned counsel for the appellant that once patta, under the Inams Act, having been granted in favour of Mokhasadar, it was not open to the High Court to hold that the property was a Wakf property. **In other words, the argument seems to proceed on the basis that once patta has been granted under the Inams Act to Mokhasadars, the land has ceased to be a Wakf property. It may be stated that a Wakf is a permanent dedication of property for purposes recognized by Muslim law as pious, religious or charitable and the property having been found as Wakf would always retain its character as a Wakf. In other words, once a Wakf always a Wakf and the grant of patta in favour of Mokhasadar under the Inams Act does not, in any manner, nulify the earlier dedication made of the property constituting the same as Wakf. After a Wakf has been created, it continues to be so far all time to come and further continues to be governed by the provisions of the Wakf Act and a grant of patta in favour of Mokhasadar does not affect the original character of the Wakf property....." (emphasis supplied).**

Since respondents 6 to 11 are not entitled to claim leasehold rights, and thereby continue to retain possession of these lands, they are liable to be evicted under Section 54 of the Act. Instead of taking action for their eviction it ill behoves either the Wakf Board or the Government to use their failure, to discharge their statutory duty under Section 54 of the Act, as an excuse to sell valuable Wakf lands in flagrant violation of Section 51 of the Act. While we are conscious that it not for this Court to substitute its opinion for that of the Wakf Board under Section 51 of the Act we are pained to note the casual manner

in which valuable wakf lands were sought to be frittered away without even a thought as to whether sale of these lands was necessary or beneficial to the wakf, whether sale of wakf lands was consistent with the objectives of the wakf and consideration for the sale is reasonable and adequate.

We must also express our inability to accept the submission that respondents 6 to 11 should be permitted to pay the present market value of these lands in reasonable instalments. While the reasons for cancellation of G.O.Ms. No. 22 dated 18.10.2004, by way of G.O.Ms. No. 8 dated 05.01.2005, is that the price fixed for the sale of Wakf lands is abysmally low, we do not propose to determine the value of these lands, in writ proceedings under Article 226 of the Constitution of India, though judicial notice can be taken of the fact that price of agricultural lands, more particularly those in proximity to urban areas/large cities, is ever on the increase.

The contention that this Court should refrain from interfering with the order of the Government in G.O.Ms. No. 22 dated 18.10.2004, since the Wakf Board can invoke Section 52 of the Act, does not merit acceptance. Under sub-section(1) of Section 52, if the Wakf Board is satisfied, after making an enquiry, that any immovable wakf property has been transferred without the previous sanction of the Board, in contravention of the provisions of Section 51, it must send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it. Under sub-section (2), on receipt of a requisition under sub-section (1), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days. The

Chief Executive Officer of the A.P. State Wakf Board executed sale deeds, in favour of respondents 6 to 11, at the dictates of the Government under G.O.Ms.22 dated 18.10.2004. Since we are satisfied that the action of the Government, directing sale of these wakf lands and execution of sale deeds in favour of respondents 6 to 11, is illegal we see no reason to relegate the Wakf Board to invoke the remedy under Section 52 of the Act.

The contention that the State Government has no power to cancel G.O.Ms.No.22 dated 18.10.2004 on the sale deeds being registered, that, since the purpose for which it was issued has already been served, the G.O. ceases to be in existence and that the question of cancellation of a non-existent G.O. does not arise, are not tenable. Mere registration of the sale deeds would not render G.O.Ms. No. 22 dated 18.10.2004, under which authority was conferred on the Chief Executive Officer, to register the sale deeds, itself redundant. G.O.Ms. No. 22 dated 18.10.2004 continued to remain in force till it was cancelled by G.O.Rt.No.8 dated 5.1.2005. Having realized its mistake, and to set right the illegality committed by it earlier, the Government issued G.O.Rt. No. 8 dated 05.01.2005 cancelling the orders issued earlier in G.O.Ms. No. 22 dated 18.10.2004. It is well settled that an administrative order, when found not to be in accordance with law, can always be cancelled by a subsequent administrative order. The Wakf Act, 1995 does not confer power on even the State Government and the State Wakf Board, let alone the Qazi, to sell wakf lands otherwise than by public auction. The mere fact that the Qazi had sought permission for the sale of wakf lands did not empower either the State Government, or the Special Officer of the A.P. State Wakf Board, to

give a go-bye to the mandatory provisions of the Act.

RULES OF NATURAL JUSTICE CAN HAVE NO APPLICATION WHERE QUASHING OF AN ORDER PASSED CONTRARY THERETO WOULD RESULT IN REVIVAL OF AN EARLIER ILLEGAL ORDER:

It is well settled that principles of natural justice are not mere incantations but are rules whose application varies in the facts and circumstances of each case. Nothing has been shown as to how respondents 6 to 11 have been prejudiced on account of their not being put on notice prior to cancellation of G.O.Rt. No.8 dated 5.1.2005. Further, quashing of G.O.Rt.No.8 dated 5.1.2005 would result in revival of the earlier illegal order in G.O.Ms.No.22 dated 18.10.2004. If the quashing of an order, which is in breach of natural justice is likely to result in revival of another order which is itself illegal, (**Gadde Venkateswara Rao Vs. Govt. of A.P.**[14], **Aligarh Muslim University Vs. Mansoor Ali Khan**[15]), or no prejudice is caused to the person concerned, interference under Article 226 is unnecessary. (**Aligarh Muslim University Vs. Mansoor Ali Khan**[15], **M.C. Mehta Vs. Union of India**[16]). Legal formulations cannot be divorced from the fact situation of the case. Unless failure of justice is occasioned or it would not be in public interest to dismiss a petition on the fact situation of a case, this Court may refuse to exercise its discretionary jurisdiction. (**Gadde Venkateswara Rao**[14], **Canara Bank Vs. Debasis Das**[17]).

Even otherwise, we have examined all the legal contentions raised regarding the validity of G.O.Rt.No.8 dated 5.1.2005. Quashing the order on the ground that respondents 6 to 11 were not heard prior

to its being passed is of no consequence when, on the legal questions raised by them, they have been heard by us. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of a hearing without the possibility of any change in the decision of the case on merits. (**Escorts Farms Ltd., previously known as M/s Escorts Farms (Ramgarh) Ltd Vs. Commissioner, Kumaon Division, Nainital, U.P.**[18]).

There is no dispute regarding the facts in issue and the only conclusion possible thereupon is that G.O.Ms.NO.22 dated 18.10.2004, being contrary to the mandatory provisions of the Act and the Rules, is illegal. Where on admitted or indisputable facts only one conclusion is possible, the court may not issue its writ to compel the observance of natural justice, not because it approves such non-observance but because courts do not issue futile writs. (**S.L. Kapoor Vs Jagmohan**[19], **Aligarh Muslim University**[15]) A court of law does not insist on compliance with a useless formality. It will not issue any direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. (**Ashok Kumar Sonkar Vs. Union of India**[20]**).**

DISCRETIONARY JURISDICTION UNDER ARTICLE 226-MUST BE EXERCISED ONLY IN LARGER PUBLIC INTEREST:

It is well to remember that this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, would not exercise its discretion to interfere except in larger public interest. A writ of mandamus and a writ of certiorari are discretionary unlike a writ of Habeas Corpus which can be sought as a matter of right. One of the principles inherent is that the exercise of discretionary power should

be for the sake of justice and if quashing the order results in greater harm to the society then the Court may refrain from exercising the power. (**State of Maharashtra Vs. Prabhu**[21]). The power under Article 226 of the Constitution of India need not be exercised in every case where there is an error of law. In the name of correcting errors of law, Courts ought not to bring forth a situation which would result in injustice and, if justice became the by-product of an erroneous view of law, Courts are not expected to erase it in the name of correcting errors of law. (**Roshan Deen Vs. Preetilal**[22]). One of the limitations imposed by this Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. It would not allow itself to be turned into a court of appeal to set right mere errors of law which do not occasion injustice. (**Sangram Singh Vs. Election Tribunal, Kotah**[23]). Even if a legal flaw might be electronically detected, this Court would not interfere save manifest injustice or a substantial question of public importance is involved. (**Rashpal Malhotra Vs. Mrs. Satya Rajput**[24]**; Council of Scientific and Industrial Research Vs. K.G.S.Bhatt**[25]). Notwithstanding its deficiencies G.O.Rt. No. 8 dated 05.01.2005, canceling G.O.Ms. No. 22 dated 18.10.2004, is in the larger public interest of safeguarding valuable wakf lands from being sold at very low prices. We see no reason, therefore, to quash G.O.Rt.No.8 dated 5.1.2005.

Respondents 6 to 11 have paid the entire sale consideration, stipulated in G.O.Ms. No. 22 dated 18.10.2004, and sale deeds have been registered in their favour. The sale consideration is said to have been kept in a fixed deposit and the interest received therefrom is said to be utilized for periodical payment to the Qazi. Since G.O.Ms.NO.22

dated 18.10.2004 has been declared to be illegal, and the sale of immovable wakf property in their favour quashed, respondents 6 to 11 are no longer the owners of these wakf lands and are entitled to be refunded the amounts paid by them earlier. The sale consideration kept as fixed deposit shall be repaid to respondents 6 to 11. In addition, they shall be entitled to interest equivalent to what has so far been paid to the Qazi from out of the fixed deposits. The Government shall compute the interest, which was earned on these fixed deposits and which has been paid to the Qazi, and shall pay the interest so calculated, along with the sale consideration kept as fixed deposit, to respondents 6 to 11 within two months from the date of receipt of a copy of the order.

W.P. No. 21854 of 2005 is allowed and W.P. Nos. 313, 597 and 24513 of 2005 are dismissed. However, in the circumstances, without costs.

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BILAL NAZKI, HACJ

Date: .12.2007

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RAMESH RANGANATHAN, J

Note: L.R. copy be marked

B/o

ASP/MRKR

[1] 2000(5) ALT 626
[2] 1999(5) ALD 324
[3] 2001(4) ALD 69 (SC)
[4] (1990)4 SCC 356
[5] (2007)2 SCC 181
[6] AIR 1969 SC 707
[7] AIR 1967 SC 295
[8] 1983(2) SCC 402
[9] 1999(6) SCC 418
[10] 2006(4) SCC 327
[11] 1972(2) SCC 744
[12] 2004(2) SCC 590
[13] AIR 1998 SC 972
[14] AIR 1966 SC 828
[15] 2000(7) SCC 529
[16] (1999) 6 SCC 237
[17] 2003(4) SCC 557
[18] 2004(4) SCC 281
[19] (1980)4 SCC 379
[20] 2007(4) SCC 54
[21] (1994) 2 SCC 481
[22] (2002) 1 SCC 100
[23] AIR 1955 S.C.425
[24] AIR 1987 SC 2235
[25] AIR 1989 SC 1972